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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-656

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 701, *Petitioner*

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 50; PACIFIC MARITIME ASSOCIATION AND NATIONAL LABOR RELATIONS BOARD,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief for Employer Respondents in Opposition

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January 15, 1974

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Brief for Employer Respondents in Opposition

The opinion of the Court of Appeals for the Ninth Circuit, dated August 29, 1974, is reported at 504 F. 2d 1209. It is printed in the appendix to the petition (Pet. Apx. 1a-19a). The Decision and Determination of dispute under § 10(k) by the National Labor Relations Board is reported at 181 NLRB 315.[1] The Board's order dated July 24, 1970,

1. Petitioner cites the Board's order as 181 NLRB 51. It is No. 51 in that volume and is printed at pages 315-317.

denying the Petition for Rehearing and the Petition for Reconsideration, is unreported. It is printed in the appendix hereto (PMA Apx. 1-3). These two orders are referred to herein as "the § 10(k) order". The Board's subsequent order that an unfair labor practice occurred is reported at 193 NLRB 266. It is printed in the appendix hereto (PMA Apx. 4-5). The trial examiner's decision is printed in the appendix hereto (PMA Apx. 6-37).

JURISDICTION

The judgment of the Court of Appeals was entered on January 13, 1975. It is printed as a Supplementary Appendix hereto, under the cover hereof. The petition for a writ of certiorari was filed on November 27, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. §§ 151, et. seq., herein "the Act", are set out in the body of the petition, 5-6.

STATEMENT

This petition arises out of a jurisdictional dispute as to whether waterfront employers, members of Pacific Maritime Association (PMA), should use longshoremen or operating engineers to man floating cranes when the PMA member uses this type of hoisting gear to load logs aboard ship. Until the sixties, logs were hoisted by conventional ship's gear. Longshoremen always did the hoisting work, being employed under the terms of the PMA's contract with the International Longshoremen's and Warehousemen's Union (ILWU).

The operating engineers involved in this dispute normally work in heavy construction. They are represented by Local 701 of the International Union of Operating Engineers (Local 701), which has contracts with members of the Associated General Contractors (AGC). The owners of the floating cranes here involved are AGC heavy construction contractors. The operating engineers claiming this work have at all times worked under Local 701 contracts with the AGC for the heavy construction industry and at all times were paid in accordance with those contracts by the AGC heavy construction contractors owning the cranes.

Local 701 has at no time had any collective bargaining relationship or contract with any PMA member.

The longshoremen claiming the work are the employes of PMA members. They are represented by the ILWU. In 1938, the ILWU was certified to represent the workers doing longshore work, including the loading of logs aboard ship, for PMA members in California, Oregon and Washington, *Shipowners Association of the Pacific Coast*, 7 NLRB 1002 (1938).

PMA and the ILWU have carried on collective bargaining since the certification in 1938. Their contract assigns the work in dispute to longshoremen employed under the ILWU-PMA contract. It provides a grievance machinery leading to arbitration, and includes a no-strike clause with an exception permitting longshoremen to engage in a work stoppage if they in good faith believe that they are being ordered to work in a way that will immediately endanger their safety. The ILWU-PMA contract further provides that this work stoppage exception shall not be used as a "gimmick" to assert any other grievance.

The work in dispute was assigned to the longshoremen as required by the ILWU-PMA contract.

In 1959 and 1960 PMA and the ILWU reached agreement on a radically new collective bargaining principle for "modernization and mechanization" of the longshore industry. It was agreed that the waterfront employers could bring new labor-saving mechanized equipment into use and that the contract provisions interfering in their economic use would be eliminated. As part of the "quid pro quo" for this concession, the PMA companies agreed that longshoremen would not be displaced by outsiders, but would operate all new equipment brought in and that the employers would provide the necessary training to enable them to do so safely, skillfully and efficiently.

By 1962 it had become apparent that this modernization and mechanization program would frequently lead to the replacement of conventional handling gear by cranes. In these circumstances the ILWU and PMA adopted a Crane Supplement to their contract on August 10, 1962. It stated that certain cranes were "longshore cranes" and must be operated by longshoremen. It stated that floating cranes were not "longshore cranes", but the Joint Coast Committee was given authority to place them in this category through joint action in the contract's administrative and grievance machinery.[2] Up to 1962, the floating cranes were used rarely and only for short periods of time to hoist extremely heavy loads. As a result, no longshoremen were displaced by the use of nonlongshoremen in manning the floating cranes.

In the sixties a new mechanized technique for loading log ships came into use. Large prepackaged loads of logs (25 to 35 tons) were brought alongside the ship and hoisted by floating cranes. This became a standard longshore pro-

2. The Joint Coast Labor Relations Committee is the top level bipartite agency for administering the contract and dealing with grievances for the California, Oregon and Washington "coast unit".

cedure, replacing the procedure under which individual logs were made up into loads at shipside and hoisted by the ship's cargo-hoisting gear. Thus the longshoremen who had manned the ship's gear under other loading techniques were displaced by the persons manning the floating cranes. Accordingly, the Joint Coast Committee agreed to a modification of the Crane Supplement so as to make floating cranes "longshore cranes" and to require that they be operated by longshoremen. This carried out the fundamental agreement in the basic 1959-1960 settlement to permit technological advance. Thereafter, longshoremen manned the floating cranes in loading logs except in one port.

At Astoria, Oregon, the PMA longshore employers used floating cranes obtained under time charter from heavy construction contractors, who supplied their construction workers represented by Local 701 as their crews to man the cranes. These crews' wages, hours and conditions were governed by the AGC contracts with Local 701. The ILWU locals and the PMA individual employers at Astoria understood that floating cranes could not be obtained under bare-boat charter at Astoria. Thus, they assumed that the AGC contractor would not charter his floating crane except with a construction worker crew aboard it.

On April 3, 1969, the Astoria longshoremen demanded that the PMA longshore employers comply with the ILWU-PMA contract promise that longshoremen shall be used, and shall be trained to the extent necessary, to operate floating cranes in any new cargo handling technique in which longshoremen are displaced, such as in loading log ships. The Astoria longshoremen raised this claim by a safety work stoppage. PMA and its members involved filed grievances attacking this procedure as a "gimmick" safety

stoppage. The ILWU responded by asserting the excuse that the contract clearly required the use of longshoremen to operate the floating cranes in Astoria log-loading. Although the PMA members immediately put longshoremen to work hoisting the logs by use of ship's gear, they pressed their grievance in accordance with the PMA policy of acting firmly to prevent the use of "gimmick" safety work stoppages to support other grievances.

These issues were taken to the arbitrator, Sam Kagel. He ruled that the Astoria local had breached the contract by a "gimmick" safety work stoppage, that the employers had been in breach of the contract's provisions that assigned to longshoremen the operation of floating cranes in any recurring longshore operation that reduced the work opportunities of the longshoremen who otherwise would operate the hoisting gear, that the Astoria log ship loading was such a recurring longshore operation, and that this employer breach did not justify the work stoppage.

Since April 3, 1969, all floating cranes used in hoisting logs out of water to shipboard in Oregon have been manned by longshoremen working under the ILWU-PMA contract and represented by the ILWU (Pet. Apx. 9a).

Over the objections of the employers, the Board gave Local 701 the privilege of picketing to get the work in dispute assigned to those it represents for collective bargaining.

In April, 1969, Local 701 picketed the PMA waterfront employers, including the terminal in Astoria at which the logs were being loaded when the jurisdictional dispute became acute. Local 701 also filed an unfair labor practice charge alleging that the work stoppage of the Astoria ILWU local had violated § 8(b)(4)(D) of the Act, 29 U.S.C. § 158(b)(4)(D). PMA filed a charge that Local 701's picket-

ing violated the same subsection of the Act. The Labor Board proceeded under § 10(l) of the Act, 29 U.S.C. § 160(l), to get an injunction against both unions.

A hearing officer of the Board held a 16-day hearing under § 10(k) of the Act, 29 U.S.C. § 160(k). A three member panel of the Board considered the record of 2,582 pages and 228 exhibits. On February 26, 1970, this panel issued a Decision and Determination, 181 NLRB 315 (Pet. Apx. 20a). This order concludes, at p. 317, with a declaration that the operating engineers are entitled to man the cranes and that the ILWU may not use § 8(b)(4) economic force to force or require the cranes to be manned by longshoremen (Pet. Apx. 37a-38a).

Petitions for rehearing and reconsideration were filed by PMA and the ILWU. On July 24, 1970, these were denied. The order noted that two of the five Board members would grant the petitions (PMA Apx. 2).

Further administrative action occurred. The Board dismissed PMA's charge against Local 701 (PMA Apx. 10, n. 5). It held a hearing under § 10(c) of the Act, 29 U.S.C. § 160(c), on the substance of Local 701's charge against the Astoria ILWU local. It held, in its § 10(c) order, that the longshoremen's work stoppage was an unfair labor practice under § 8(b)(4)(D) because Local 701 had won the § 10(k) case (PMA Apx. 9, 28-29, 33-34).

The court of appeals set aside the Board's § 10(k) order.

Three actions were instituted in the Ninth Circuit. The Board sought to enforce its § 10(c) order. The ILWU sought review of the § 10(c) order and the underlying § 10(k) order. The PMA sought review of the § 10(k) order. After argument, the court denied enforcement, set aside the order and remanded the case to the Board (504 F.2d at 1222, Pet. Apx. 19a).

The court first considered the § 10(k) order in the light of the substantial evidence rule. It found several deficiencies, to-wit: The Board's holding that the ILWU-PMA contract did not assign the work in dispute to the longshoremen was not supported by substantial evidence (Pet. Apx. 6a-9a). Contrary to the Board's usual practice in § 10(k) orders, this order made no mention of the factor of employer preference although there was substantial evidence in the record as to this factor (Pet. Apx. 5a-6a, 9a-10a, 17a, 19a). The Board's failure to find, as requested by PMA and the ILWU, that the employer preference was to use longshoremen, was not supported by substantial evidence (Pet. Apx. 9a-10a). The opinion also stated that these errors suggest that the reasons for them may have been responsible for findings against the longshoremen in regard to other factors (Pet. Apx. 9a-11a).

The court then turned to the question of whether the Board's fact finding errors "undermine its § 10(k) decision to the extent that the work assignment must be rejected" (504 F. 2d at 1217, Pet. Apx. 11a). It held that the Board's erroneous conclusion as to the ILWU-PMA contract precluded enforcement of the order under review. In addition, it held that the Board's "standardless decisionmaking" in this case precluded viable judicial review and hence precluded judicial enforcement of its § 10(k) order.

The court's evaluation of the Board's § 10(k) adjudicative process was explained in detail. It paid heed to the judgments of writers in the law journals and to the conclusions of a special § 10(k) committee of the American Bar Association. It made its own study of the § 10(k) process from 1960, when Mr. Justice Black read the opinion of the unanimous Court in *NLRB v. Radio & Television Broadcast Engineers Union, Local 1212 (CBS)*, 364 U.S. 573 (1960).

The opinion reports, "Many commentators have examined the Board's 10(k) decisions and have been dismayed by the Board's failure to articulate any decisionmaking standards." (Pet. Apx. 15a). It finds that the Board has consistently maintained "that its policy in making 10(k) work awards is to decide each case on its own merits without announcing any standards or principles which govern the decisions that are made" (Pet. Apx. 16a). The opinion states that this "practice has relieved the Board of the burden of reconciling its decisions either with precedent or with any predetermined set of standards", thus making "judicial review virtually impossible, because the decision is totally unprincipled" (Pet. Apx. 16a). It also found that the Board's decisionmaking process was "more obtuse than usual in the § 10(k) case under review" (504 F. 2d at 1213, Pet. Apx. 5a).

Despite the Board's habit of adumbration, the court stated that its study confirmed the conclusions of the commentators that two decisionmaking patterns can be discerned: First, the Board has consistently assigned the work in dispute in accordance with the employer's preference, if there be one (Pet. Apx. 17a). Second, it has consistently assigned the work in accordance with the contract requiring the employer to use one of the groups claiming the work, if there be one and only one such contract (Pet. Apx. 18a). The court also confirms the conclusion of the commentators "that the Board's statement that no factor is necessarily more important than any other is simply false" (504 F. 2d at 1220, Pet. Apx. 17a).

The court recognizes that a period of faint images and shadowed reasoning was acceptable in the beginning.[3] But

3. Section 10(k) was enacted in 1947. The incident giving rise to this Court's *CBS* opinion occurred ten years later in 1957. The *CBS* opinion was filed in 1960. The charge giving rise to this petition was filed ten years later in 1970.

it went on to say, 504 F. 2d at 1220, 1221 (Pet. Apx. 17a, 18a):

> "The time has come, however, for the Board to accord a measure of weight to its past decisions and to establish some rational principles governing the weight that it gives to the various factors it considers in § 10(k) hearings. * * *
>
> "As we have said, the failure of the Board to establish any standards precludes viable judicial review. The case before us is a good example of the problems created by standardless decisionmaking."

The opinion below then deals with the specifics of the § 10(k) order under review (504 F. 2d at 1221, 1222, Pet. Apx. 19a):

> ". . . Our reversal of the Board's conclusion as to the applicability of the contract precludes us from sustaining the Board's work assignment in this case. . . .
>
> "In this case the only applicable collective bargaining agreement assigns the disputed work to the Longshoremen. The employers also appear to prefer that the work assignment go to the Longshoremen. In light of the Board's policy of giving controlling weight to these factors under similar circumstances, we are unable to conclude, absent convincing reasoning from the Board to the contrary, that the Board's work assignment to the Engineers is not arbitrary and capricious."

The court simply holds (1) that the Board must proceed on the basis of findings supported by substantial evidence and (2) that it must follow its established precedents or explain why it does not do so.

ARGUMENT

1. Issues as to whether findings of the Board are supported by substantial evidence and as to whether any un-

supported finding is of significance are left in the hands of the courts of appeal. This Court stated in *NLRB v. Pittsburgh Steamship Co.*, 340 U.S. 498 (1951) at 502, 503:

> "Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders. . . .
>
> "This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way."

The same rule is set forth in *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951) at 490-491.

The court of appeals applied the substantial evidence standard in accordance with the normal and usual practices of the courts of appeals. It considered the evidence supporting the finding and that detracting from the finding. This is required by *Universal Camera, supra*, 340 U.S. 474 (1951). This Court stated, 340 U.S. 474 at 487-488:

> "Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight."

There is no need for this Court to reconsider either of these principles. There is no reason to disturb the conclusions below that there was not substantial evidence to support either the Board's failure to find that the ILWU-PMA

contract included the post-1962 terms assigning the work in dispute to the longshoremen or the Board's failure to find that the employer preference was that longshoremen do the work. The case was properly remanded to the Board for further action on the basis of the court's opinion with respect to the Board's findings.

2. The holding of the court below that the Board's order was obtuse and did not set out the grounds upon which it reached its decision provides no basis for a writ. The applicable rule of administrative law was applied in *Secretary of Agriculture v. United States*, 347 U.S. 645 (1954). This Court set aside an Interstate Commerce Commission order authorizing certain charges. The opinion by Mr. Justice Frankfurter explained, at 652-654:

> ". . . (W)hile the Commission has adumbrated the reasons that commended these charges to its approval, the Commission has not adequately explained its departure from prior norms and has not sufficiently spelled out the legal basis of its decision. . . .
>
> "In short, the Commission has not explained its decision 'with the simplicity and clearness through which a halting impression ripens into reasonable certitude. . . .'"

Mr. Justice Cardozo had previously stated the underlying principle in *United States v. Chicago, Milwaukee, S. P. & P. R. Co.*, 294 U.S. 499, at 511 (1935):

> "We must know what a decision means before the duty becomes ours to say whether it is right or wrong."

This rule of law applies to the Board. In *Phelps Dodge Corporation v. NLRB*, 313 U.S. 177 (1941), this Court stated at 196-197:

> "From the record of the present case we really cannot tell why the Board has ordered reinstatement of the strikers who obtained subsequent employment. . . . The

> administrative process will best be vindicated by clarity in its exercise. . . . [I]t will avoid needless litigation and make for effective and expeditious enforcement of the Board's order to require the Board to disclose the basis of its order. . . ."

This rule has been consistently followed by this Court. *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80, 94-95 (1943); *Burlington Truck Lines, Inc., et al. v. United States*, 371 U.S. 156, 167, 168 (1962); *Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968); *Baltimore & Ohio R. Co. v. Aberdeen & Rockfish R. Co.*, 393 U.S. 87, 92 (1968); *NLRB v. Metropolitan L. Ins. Co.*, 380 U.S. 438, 442-444 (1965).

These cases cover a broad spectrum of administrative action. They clearly establish that a well-accepted rule of law, repeatedly set forth in the opinions of this Court, required the court of appeals to refuse to enforce the Board's § 10(k) order in view of the lack of articulated reasons to disclose the basis for the order. There is no need for this Court to issue another opinion stating this rule.

3. The Court of Appeals was on equally sound footing in holding that the Board reached the wrong conclusion as to the meaning of the ILWU-PMA contract. It noted that PMA and the longshoremen argued "that the agreement must be read in light of the interpretation given to it by the parties" (Pet. Apx. 7a). This Court stated in *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 567 (1960):

> "In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve."

In *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 580 (1960), this Court stated, "Gaps may be left to be filled in . . ." by grievance machinery action during the contract term. The Coast Committee's action as to floating cranes filled such a gap.

The Board, however, considered only the bare words in the 1962 Crane Supplement. It refused to consider the evidence that the Joint Coast Committee, after 1962, put floating cranes into the "longshore crane" category in accordance with the power it had and to meet the development of mechanization techniques. The court of appeals reached the proper construction of the ILWU-PMA contract on the basis of all the evidence in the record.

The court's opinion also points out (Pet. Apx. 7a-8a) that an award of the ILWU-PMA arbitrator held that the ILWU-PMA contract assigns the work in dispute to the longshoremen. The court held that the Board erred in ignoring this award. There is no room for argument as to the rule of law that this Court has held is governing in these circumstances. *United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960), states at 567-569:

> "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. * * *
>
> ". . . When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under the regime is entrusted to the arbitration tribunal."

A federal administrative agency has an equal obligation to pay heed to the function of the grievance machinery, which is "a vehicle by which meaning and context are given to the collective bargaining agreement".[4]

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4. *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581 (1960).

4. This Court's opinion in *NLRB v. Plasterers' Union Local No. 79 (Plasterers)*, 404 U.S. 116 (1971), does not overrule this principle that the arbitrator, not the court, is to decide any question as to the meaning of the contract. *Plasterers* involved a different question, i.e., whether an agreement to arbitrate the work assignment issue had been reached that would abort the Board's § 10(k) procedure. This Court held that the § 10(k) procedure is aborted only if there is agreement among the two unions and the employer that they will dispose of the dispute through arbitration.

The court of appeals correctely distinguished *Plasterers* because it did not involve a question as to the construction of a contract (Pet. Apx. 8a-9a).

The issue before the Board, and the court of appeals, was whether the ILWU-PMA contract assigns the work to the longshoremen. The Board held that it does not. The court of appeals, the arbitrator, and the parties in their Joint Coast Committee procedure for the administration of the contract and the adjudication of grievances (and before the Board and in court), were all in agreement: the ILWU-PMA contract does assign the work to the longshoremen. There is no reason why this Court should be asked to adjudicate this question of contract construction. Such questions can be safely left in the hands of the courts of appeals.

5. Petitioner misreads *CBS (NLRB v. Radio and Television Broadcast Engineers Union Local 1212)*, 364 U.S. 573 (1960). Petitioner claims that *CBS* directs the Board to use "experience and common sense" like a jury, without developing any principles, policies, practices or precedents in § 10(k) cases (Pet. 31). It bases this claim on a sentence in the *CBS* opinion, 364 U.S. at 583:

> "Experience and common sense will supply the grounds for the performance of this job [of deciding which group of employees involved in a jurisdictional dispute should be assigned the work]."

This statement was made in response to the Board's claim that it should not be assigned this job because of "lack of standards" in the statute. The *CBS* opinion states that the Board should develop grounds on the basis of experience and common sense, not that it should make ad hoc work assignments and proceed without standards.

The courts of appeal have the statutory duty to review the orders of the Labor Board. To do so the court must be able to determine whether the Board's "conclusions rest on erroneous legal foundations". *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956); *NLRB v. Brown*, 380 U.S. 278, 292 (1965). To do so, the court must be informed of the grounds of the Board's decision.

6. The court of appeals did not usurp the Board's function of making § 10(k) work assignments. It remanded the case to the Board for further proceedings under § 10(k). Compare *Spitzer Akron, Inc. v. NLRB*, 504 F.2d 28 (6th Cir., 1974). True, the court's opinion requires the Board to accept the conclusion that the ILWU-PMA contract assigns the work to the longshoremen, to give consideration to the employer preference factor and to the evidence showing that the employer prefers to have the longshoremen do the work, to receive the evidence on other factors, and to follow its established policies and precedents or provide "convincing reasoning" as to its "departure from prior norms". Thus, the record would appear to permit no lawful order but one assigning the work to the longshoremen. However, the opinion states, 504 F.2d at 1221, Pet. Apx. 19a: "The Board must be given the first opportunity to use

its accumulated expertise and make a principled rather than an arbitrary award of the work in light of the correct construction of the contract."

CONCLUSION

The opinion below is based on principles long settled in this Court and on a routine exercise of the duty of the courts of appeal to review Labor Board orders, to-wit: to determine whether there is substantial evidence to support the findings, to determine whether the decision rests on "erroneous legal foundations", and to grant or deny enforcement in accordance with law. The writ should be denied.

Respectfully submitted,

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January 15, 1975

Supplementary Appendix

JUDGMENT

Before: MERRILL and DUNIWAY, Circuit Judges, and TAYLOR,* District Judges.

The above consolidated causes came on to be heard upon the application for enforcement and on petitions for review of an order of the National Labor Relations Board dated September 21, 1971, against International Longshoremen's and Warehousemen's Union, Local No. 50, its officers, agents, and representatives. The Court heard argument of respective counsel on November 12, 1973, and has considered the briefs and transcript of record filed in these causes. On August 29, 1974, the Court being fully advised in the premises, handed down its opinion granting the petitions for review, denying enforcement of, and setting aside the Board's Order and remanding the case to the Board for further proceedings consistent with its opinion. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that enforcement of the order of the National Labor Relations Board directed against International Longshoremen's and Warehousemen's Union, Local No. 50, its officers, agents, and representatives, be and it hereby is denied.

Endorsed, Judgment Filed and Entered
JAN 13 1975

/s/ Emil E. Melfi
Emil E. Melfi
Clerk
[A TRUE COPY
ATTEST:
S. A. White, Deputy
Emil E. Melfi
Clerk]
/s/ S. A. White

SO ORDERED:
/s/ BEN C. DUNIWAY
/s/ CHARLES MERRILL
/s/ FRED M. TAYLOR

*The honorable Fred M. Taylor, Senior United States District Judge for the District of Idaho, sitting by designation.

SUPREME COURT, U. S

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INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 701, *Petitioner*

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 50; PACIFIC MARITIME ASSOCIATION AND NATIONAL LABOR RELATIONS BOARD,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Appendix to Brief in Opposition for Pacific Maritime Association Brady-Hamilton & Stevedore Co. Jones-Oregon & Stevedoring Co.

RICHARD ERNST
P.O. Box 26314
635 Sacramento Street
San Francisco 94126

January 15, 1974

SORG PRINTING COMPANY OF CALIFORNIA. 346 FIRST STREET. SAN FRANCISCO 94105

Appendix

United States of America
Before the National Labor Relations Board

International Longshoremen's & Warehousemen's Union, Local No. 50 and Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO	Cases 36-CD-54
and	
Brady-Hamilton Stevedore Company and Willamette-Western Corporation International Longshoremen's & Warehousemen's Union, Local No. 50 and Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO	36-CD-54-2
and	
W. J. Jones & Sons, Inc. and General Construction Company Hoisting and Portable Engineers Local No. 701, International Union of Operating Engineers, AFL-CIO and Pacific Maritime Association	36-CD-55

ORDER

On February 26, 1970, the National Labor Relations Board issued its Decision and Determination of Dispute[1]

1. 181 NLRB No. 51.

in the above-entitled proceeding in which it determined that employees who are currently represented by Hoisting and Portable Engineers Local No. 701, International Union of Operating Engineers, AFL-CIO, are entitled to perform the work of operating barge-mounted floating whirly-type cranes lifting bundles of logs from the water and placing them into the holds of ships and barges at the Employers' Astoria, Oregon, operations; and that International Longshoremen's & Warehousemen's Local No. 50 is not entitled by means proscribed by Section 8(b)(4)(D) of the National Labor Relations Act, as amended, to force or require the Employers to assign such work to longshoremen represented by it.

Thereafter, on March 9, 1970, the Employers, Pacific Maritime Association and its stevedore members, Brady-Hamilton Stevedore Co., and W. J. Jones & Son, Inc., filed a Petition for Rehearing before the Full Board on the Issues Involved in the Order of February 26, 1970 and for Oral Argument. They also filed a brief in support thereof, alleging errors of fact and law in said Decision and Determination of Dispute, and requesting reconsideration thereof. On March 13, 1970, Local No. 50 filed a Petition for Reconsideration and Clarification of Decision and Determination of Dispute, and thereafter filed a supporting brief. Local No. 701 filed a brief and a reply brief in opposition to the aforesaid Petitions; and a Motion to Strike Briefs of International Longshoremen's Union, Local No. 50 and Pacific Maritime Association or in the Alternative Those Portions of the Briefs which Misstate the Facts. The Employers and Local 50 filed a response in opposition to the Motion to Strike.

The Board has duly considered the matter and denies[2] the Petitions filed by the Employers and Local No. 50 be-

2. Members McCulloch and Brown would grant the Petitions filed by the Employers and Local No. 50.

cause the matters contained therein are lacking in merit. In these circumstances, the Motion filed by Local 701 is also denied as no prejudice to that Union will result therefrom. Accordingly,

It Is Hereby Ordered that the Petition filed by Pacific Maritime Association and its stevedore members, Brady-Hamilton Stevedore Co. and W. J. Jones & Son, Inc.; the Petition filed by International Longshoremen's & Warehousemen's Union, Local No. 50; and the Motion filed by Hoisting and Portable Engineers Local No. 701, International Union of Operating Engineers, AFL-CIO, be, and they hereby are, denied.

Dated, Washington, D. C., July 24, 1970.

By direction of the Board:

Robert Volger
Associate Executive Secretary

193 NLRB No. 37 D—5549 Astoria, Oreg.

United States of America
Before the National Labor Relations Board

International Longshoremen's and Warehousemen's Union, Local No. 50 (Brady-Hamilton Stevedore Company and Willamette Western Corporation) and Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO	Case 36-CD-54
International Longshoremen's and Warehousemen's Union, Local No. 50 (W. J. Jones & Son, Inc. and General Construction Company) and Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO	Case 36-CD-54-2

DECISION AND ORDER

On April 13, 1971, Trial Examiner James T. Barker issued his Decision in the above-entitled consolidated proceeding, finding that Respondent Union had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions and a supplement to exceptions, the Intervenor[1]

1. Pacific Maritime Association and its members Brady-Hamilton Stevedore Company and W. J. Jones & Son, Inc.

filed exceptions to the Trial Examiner's Decision, with supporting briefs, and the Charging Party filed a brief supporting the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, briefs, and entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that the Respondent, International Longshoremen's and Warehousemen's Union, Local No. 50, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's recommended Order.

Dated, Washington, D.C. Sep 21 1971

Edward B. Miller, *Chairman*
John H. Fanning, *Member*
Howard Jenkins, Jr., *Member*
National Labor Relations Board

(SEAL)

TXD-(SF)-33-71
Portland, Oreg.

United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Branch Office
San Francisco, California

International Longshoremen's and Warehousemen's Union, Local No. 50 (Brady-Hamilton Stevedore Company and Willamette Western Corporation) and Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO	Case No. 36-CD-54
International Longshoremen's and Warehousemen's Union, Local No. 50 (W. J. Jones & Son, Inc. and General Construction Company) and Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO	Case No. 36-CD-54-2

Jerome F. McCarthy, Esq., of
Seattle, Wash., for the
General Counsel.

Willner, Bennett & Leonard, by
Lillian Meyers, Attorney, and
Don S. Willner, Esq., of
Portland, Oreg., for the Charging Party.

Gladstein, Leonard, Patsey &
Andersen, by Norman Leonard, Esq.,
of San Francisco, Calif., for
the Respondent.

Ernst & Daniels, by Richard Ernst, Esq.,
of San Francisco, Calif., for the Intervenor.

TRIAL EXAMINER'S DECISION

Statement of the Case

JAMES T. BARKER, Trial Examiner: This matter was heard at Portland, Oregon, on January 14 and 15, 1971, pursuant to separate charges filed by Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO, hereinafter called Operating Engineers, in Cases Nos. 36-CD-54 and 36-CD-54-2, respectively. The charge in the first designated case was filed on April 8, 1969, by the Operating Engineers, and the charge in the latter case was filed on April 23, 1969. On October 8, 1970, the Acting Regional Director of the National Labor Relations Board for Region 19 issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing alleging that International Longshoremen's and Warehousemen's Union, Local 50, hereinafter called Respondent, the Longshoremen, or Local 50, was engaging in conduct in violation of Section 8(b)(4)(i)(D) of the National Labor Relations Act, as amended, hereinafter called the Act. Thereafter, on November 9, 1970, the Regional Director of the National Labor Relations Board for Region 19 issued an amendment to the consolidated complaint alleging that Respondent was engaging in conduct violative of Section 8(b)(4)(i)(ii)(D) of the Act.

The Respondent timely filed an answer to the consolidated complaint and to the amendment to the consolidated complaint. The parties and the Intervenor timely filed briefs with me on March 5, 1971.[1]

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1. Pursuant to a pretrial motion which was granted by Trial Examiner James R. Webster, the Pacific Maritime Association, Brady-Hamilton Stevedore Company and W. J. Jones & Son, Inc., were permitted to intervene in the proceedings and were represented at the hearing by counsel.

Upon consideration of the briefs and upon the entire record in this case,[2] I make the following:

Findings of Fact

I. Jurisdictional Facts

Willamette Western Corporation, hereinafter called Willamette, and General Construction Company, hereinafter called General, are engaged in the construction industry and annually conduct business outside the State of Oregon in excess of $50,000. Brady-Hamilton Stevedore Company, hereinafter called Brady, annually performs stevedoring services for shipping companies sailing in intercoastal or international waters valued in excess of $50,000 and said shipping companies annually have a gross volume of business in excess of $500,000. W. J. Jones & Son, Inc., hereinafter called Jones, is an Oregon corporation engaged in the performance of stevedoring services for shipping companies operating in interstate or in foreign commerce. Jones annually performs stevedoring services for shipping companies sailing in intercoastal or international waters valued in excess of $50,000, and said shipping companies annually do a gross volume of business in excess of $500,000.

Pacific Maritime Association, hereinafter called PMA, is a California corporation admitting to membership employers engaged in shipping, stevedoring, and terminal business at ports in California, Oregon, and Washington. Among its members are Jones and Brady. PMA was established and exists, *inter alia*, for the purpose of negotiating

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2. At the hearing the Trial Examiner ruled that the record in the Section 10(k) proceeding and the Board's Decision and Determination of Dispute, reported at 181 NLRB No. 51, would constitute part of the record in the instant case.

collective-bargaining agreements with unions on behalf of its employer-members.

Upon these stipulated and/or admitted facts, I find that at all times material herein Willamette, General, Jones, Brady, and PMA have been, and are, employers within the meaning of Section 2(2) of the Act and have been, and are, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organizations Involved

Hoisting and Portable Engineers, Local 701, International Union of Operating Engineers, AFL-CIO, and International Longshoremen's and Warehousemen's Union, Local No. 50, are stipulated and/or admitted to be labor organizations within the meaning of Section 2(5) of the Act, and I so find.

III. The Unfair Labor Practices

A. *The Issues*

The General Counsel, resting on the Section 10(k) record, contends that the evidence adduced at that hearing, cognizable in this Section 10(c) proceeding, constitutes substantial, preponderating evidence in support of the unfair labor practice allegations of the complaint; and asserts that findings of Section 8(b)(4)(i)(ii)(D) violations on the part of Respondent should be made by the Trial Examiner.

The Respondent and Intervenor raise several procedural defenses, and the Respondent contends that, even assuming rejection of these defenses, the record contains no evidence of conduct on the part of Respondent violative of Section 8(b)(4)(ii)(D) of the Act.

In substance, the Respondent and Intervenor contend, (1) that the notice of hearing should be quashed and the complaint herein dismissed because the procedures followed by the Board for resolving jurisdictional disputes fail to conform to the mandate of the statute, and do not conform to the statutory procedures which were given delineation by the U. S. Supreme Court in the *CBS* case;[3] (2) that the Board's Decision and Determination of Dispute herein is legally deficient in that the Board failed to render a binding and compulsory determination of the dispute and/or to obtain compliance therewith;[4] (3) that the notice of hearing herein should be quashed and the instant proceeding be postponed until an amended complaint based upon the charges in Case No. 36-CD-55[5] is issued consolidating that case with those presently before the Trial Examiner in the instant proceeding so that, with Local 701 joined as a respondent with Local 50 in a Section 10(c) proceeding, a resolution can be reached concerning the disputed work assignment and a record made upon which an orderly review of the Board's decision could be

3. *N.L.R.B. v. Radio and Television Broadcast Engineers Union (CBS)*, 364 U. S. 573.

4. A consequence of this failure, contends the Intervenor, is to leave the Longshoremen free to use lawful means to enforce its contractual rights to the work and thus to subject the employers to "anarchy" arsing from the Board's asserted failure to issue a binding award of the work and to take steps under Section 10(c) to enforce the award.

5. That case involved a charge filed by PMA, the Intervenor herein, on April 22, 1969, alleging violations of Section 8(b)(4)(i)(ii)(D) arising from picketing engaged in by Local 701 of the Operating Engineers, at the Astoria, Oregon facilities which had the purpose and object of forcing PMA to assign the work of driving cranes to its members rather than to registered longshoremen working under the ILWU-PMA Pacific Coast contract who were at that point in time allegedly doing the work. The picketing was enjoined and the charge was dismissed by the Regional Director of Region 19 on July 28, 1970.

perfected;[6] (4) that the record of the Section 10(k) proceeding should be struck and/or not considered in this Section 10(c) proceeding on the merits of the alleged unfair labor practice conduct, in that Section 102.92 of the Board's Rules and Regulations, Series 8, as amended, is "in violation of the law" and for the further reason that consideration in this Section 10(c) proceeding of evidence adduced in a Section 9 "type" hearing deprives the moving parties of due process of law;[7] (5) that the Board procedure which treats its Decision and Determination of Dispute issued pursuant to a Section 10(k) proceeding as binding and conclusive in a Section 10(c) proceeding involving a purported violation of Section 8(b)(4)(D) of the Act is similarly deficient in legality and in meeting due process requirements; (6) that for this latter reason it was error for the Trial Examiner at the instant hearing to reject evidence of the existence of an outstanding certification giving Local 50 jurisdiction over the disputed work and evidence allegedly establishing the existence of collective-bargaining agreements between the ILWU and PMA giving employees represented by Local 50 the right to perform the disputed work; (7) that the Trial Examiner erred in rejecting evidence revealing that the work of loading logs at Astoria has since April 1969 been satisfactorily performed by longshoremen in that the evidence rejected

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6. The Intervenor contends, in apparent departure from the position of the Respondent on this motion, that the charges in each of the three aforesaid related cases should be held in abeyance pending the issuance by the Board of a binding and compulsory determination of the work assignment dispute such as is envisaged by the statute and required by the *CBS* decision.

7. The Respondent and Intervenor contend that Congress intended Section 10(k) procedure to be special and unique and that in following Section 9 procedure in Section 10(k) hearings the Board errs.

related to a period subsequent to the Section 10(k) hearing and was thus not available for introduction at that hearing; and (8) the Board's Decision and Determination of Dispute was based upon errors of fact and of law.

B. *Pertinent Facts*

1. Background Facts

a. *The setting*

This case arises from a dispute between the Operating Engineers and the Longshoremen over the right to man barge-mounted floating whirly-type cranes used by stevedore companies in the Port of Astoria, Oregon, for lifting bundles of logs weighing from 25 to 45 tons from the water and placing them into the hulls of ships and barges. The whirly-type crane is manned by a crane operator and by a fireman or engineer. From 1964 until April 3, 1969, Operating Engineers had been used exclusively in operating the whirly-type crane.

To facilitate the log-loading operation at the Port of Astoria, Brady and Jones, stevedoring companies engaged in loading of logs in the Port of Astoria, Oregon, leased waterborne whirly-type cranes from Willamette and General. Under the separate lease arrangements with Brady and with Jones, Willamette and General, respectively, at times pertinent herein, provided the employees to operate the cranes. In accordance with the terms of a bare-boat charter, employees provided to Brady by Willamette are deemed to be the employees of Brady. All of the employees who, prior to April 3, manned the floating cranes for Brady and Jones were, as found, members of the Operating Engineers.

Immediately prior to April 3, 1969, the matter of manning the whirly-type floating cranes became an issue. As subsequently considered, on April 3 longshoremen refused

to perform certain work tasks essential to the log-loading process. Consequently, the loading process came to a halt. The whirly-type floating cranes were not thereafter manned by employees represented by the Operating Engineers. The stevedore companies then assigned the work of loading logs to longshoremen. This assignment was subsequently confirmed by an arbitration award arising from a proceeding to which the Longshoremen and PMA were parties. The Operating Engineers were not a party to this arbitration proceeding.

b. *The Section 10(k) Proceeding*

Pursuant to charges filed in the instant case, and to charges filed, as above noted, on April 22, 1969, by PMA in Case No. 36-CD-55, the aforesaid cases were consolidated and a notice of hearing was issued directing that a Section 10(k) hearing be conducted into the work assignment dispute.

In due course, a hearing was conducted pursuant to Section 10(k) of the Act. Thereafter, on February 26, 1970, the Board issued its Decision and Determination of Dispute wherein the Board found that employees "currently" represented by the Operating Engineers were entitled to perform the disputed work.

On March 6, 1970, Respondent filed a Petition for Reconsideration and Clarification of Decision and Determination of Dispute with the Board. On July 24, the Board issued an order denying Respondent's petition for reconsideration and subsequently PMA filed an application for stay with the Board. The application was denied on September 4, 1970.

The Respondent concedes that since on or about February 26, 1970, it has failed and refused to comply with the Board's Decision and Determination of Dispute.

2. The alleged unlawful conduct

a. *The refusal to perform log-loading tasks*

On the morning of April 3, Elwyn Ty Stanton, a floating crane operator in the employ of Willamette and a member of the Operating Engineers, reported to work at the Astoria docks. Stanton had been in the employ of Willamette for approximately eleven years and had worked at the Astoria docks for approximately five years. On April 3, as was usual procedure, upon reporting to work at approximately 8 a.m., Stanton went aboard his assigned crane which was situated on a floating barge. In accordance with normal practice, at approximately 8 a.m., on April 3, Stanton moved the boom of the crane over the water causing the slings which are attached to the end of the boom to drop in a position proximate to logs which were floating in the water. It is usual work procedure at this point in the work process for a hookup crew of four men—designated as raftmen—who are members of the Respondent Longshoremen to secure the slings at the end of the crane boom to logs situated in the water. In this manner through the use of the crane the logs are loaded in the hulls of ships and barges. When, on the morning of April 3, the slings were presented to the raftmen, unlike previous occasions in the work experience of Stanton, the raftmen did not secure the logs.

In a similar manner, on the morning of April 3, Stanton observed that the raftmen assigned to work with three other cranes of Willamette refrained from securing the logs when the slings were presented to them by the crane operators.

This condition of inactivity with respect to the four Willamette cranes persisted for approximately 30 minutes.

At this point in time, Dale Larson, a gear lockerman, employed by Brady, the lessee of the floating cranes, approached Stanton and seven other operators and engineers in the employ of Willamette.[8] Addressing Stanton and the seven other assembled crew members, Larson said, "You're fired; get your personal gear and get off." Larson added that longshoremen were going to operate the cranes.

Stanton and his coworker, Paul Bell, left and thereupon made telephone calls to Willamette and the Operating Engineers, respectively. Later in the morning, Stanton observed individuals whom he recognized as longshoremen operating the floating cranes. At approximately 1 p.m., engineers, who were members of the Operating Engineers, and who were normally employed on the crews which were manned by Operating Engineers, shut off the power which operated the floating cranes. It was the daily responsibility of the engineers employed on the crews to shut off the power at the end of their work shift.[9]

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8. Larson's job and responsibilities, at times pertinent herein, consisted, *inter alia*, of informing crane operators of Willamette as to the vessel on which they should work and as to the position on the vessel from which they should perform their work tasks. For a period of approximately three years prior to April 3, Larson had been transmitting instructions to Stanton, and Stanton had followed them. The testimony of Elwyn Ty Stanton and that of Norman Cass, equipment supervisor of Willamette, reveals that Larson, at times pertinent, possessed and exercised the authority of a supervisor within the meaning of the Act.

9. All of the foregoing is based upon the credited testimony of Elwyn Ty Stanton. With respect to the techniques employed in securing the logs of the hoisting gear and the findings concerning the role of longshoremen crews in carrying out or facilitating the hoisting procedure, I also rely upon the credited testimony of Bill Krohn. With respect to Stanton's testimony that he contacted Willamette on the morning of April 3 I have also considered the testimony of Norman Cass. Cass confirms that Stanton contacted him on April 3 and that he instructed him and the other operators to "hang tough" and, in substance, await developments. Cass recalled the call as occurring in the afternoon and not the morning

In like manner, upon reporting to work on the morning of April 3, Bill Krohn moved the hoisting gear of his floating crane over the logs situated in the water. This action conformed to Krohn's normal practice which he had followed during the four and a half years of his work experience as a crane operator in the employ of General at the Astoria docks. Krohn observed that the raftmen to whom he presented the slings made no effort to secure the logs. Consequently, he left the crane gear hanging over the logs for approximately 30 minutes. The raftmen continued to abstain from securing the logs. Thereupon, Krohn left the crane and proceeded to the dock. Upon arriving at the dock, he spoke with John Tyler, a superintendent of Jones, the Company for which Krohn was performing services under the crane lease arrangement between General and Jones. Krohn asked Tyler if he knew anything about what was happening. Tyler responded that he did not know but that he would make some calls and find out. Tyler added that he knew that, "(t)hey would not be using the General cranes on this ship."

Krohn did not thereafter operate a floating crane at the Astoria dock. Krohn observed that on April 3, four floating cranes of General were operative and that the hookup gear of each was extended over the floating logs in a manner permitting the raftmen situated on the logs to secure them for hoisting. Krohn further observed that, in each instance, raftmen refrained from securing the logs.

Krohn testified that, by reason of his prior work at the Port of Astoria, he was acquainted with the four raftmen

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as Stanton testified. However, Cass lacked certitude in this regard. I find that Stanton's accounting of the chronology was reliable and that he contacted Willamette in the morning. I conclude Cass was either mistaken as to the time of his conversation with Stanton or the Stanton-Cass conversation was in addition to the company contact to which Stanton testified.

working in the water on the morning of April 3, whose normal task it was to secure the floating logs to the slings affixed to the boom of the crane which he was operating. When the four raftmen failed to secure the logs for hoisting after the boom had been placed over the floating logs, Krohn called to the raftmen. He inquired, "what was taking place." The raftmen responded that they knew nothing and that they had just been told to stand by until further orders and not to hook up the logs.

At a subsequent point in time, prior to 9 a.m., Tyler again spoke with Krohn. Tyler instructed Jones to remove the cargo gear belonging to Jones from the floating cranes and prepare to be towed to dockside. Krohn transmitted these instructions to the other crane operators.

Because the tugboats necessary to tow the personnel and gear dockside were not available until approximately 2:30 p.m., Krohn remained on the floating cranes until the tugboats arrived. During the interim, Krohn observed longshoremen operating ships' gear endeavoring to load bundles of floating logs. Because of prevailing circumstances, these attempts were unsuccessful, but by a modified approach the longshoremen were successful in loading individual logs aboard the ship.

On April 3, Krohn and other personnel of General prepared the floating cranes for towing. On April 4, the cranes were towed approximately one mile upstream from the port dock area and were there moored. The crane personnel, exclusive of Krohn, completed the week doing maintenance work. Krohn remained at the Port of Astoria for approximately two weeks thereafter performing maintenance work on the cranes themselves.[10]

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10. The foregoing is based upon the credited testimony of Bill Krohn.

b. *Radovich and Niemi converse*

In the meantime, at approximately 8:15 a.m., on April 3, Stanley Radovich, a superintendent of Brady, who, at times relevant was the superintendent in charge of the Astoria stevedoring operations of Brady, spoke with Roy Niemi. Niemi was at that time a member of Respondent's labor relations committee. Radovich approached Niemi and asked Niemi why the longshoremen were not hooking on the logs. Niemi responded that the longshoremen felt it was unsafe in view of the hard feelings that existed between Local 701 and ILWU Local 50.[11]

c. *The joint telephone conference*

Thereafter, at approximately 8:30 a.m., on the morning of April 3, Donald Beal, labor relations administrator for PMA, participated with representatives of Respondent in what was essentially a conference telephone conversation of some one hour's duration. The telephone conversation was designated by the participants as a special meeting of the Astoria Joint Longshore Labor Relations Committee and conformed to procedures which were invoked by the participants in circumstances which necessitated immediacy of communication between the parties and which obviated travel between Astoria and Portland, Oregon. Don Beal, William Caruso and Bill Church, all of whom were representatives of PMA, participated in the telephone conference from Portland. James VanOsdol, Gordon Kluge and Glen Bird, all members of Respondent's labor relations committee spoke from Astoria. The basic telephone conversation between these parties was punctuated on occasions during the conversation with separate telephone conversa-

11. The foregoing is based upon the credited testimony of Stanley Radovich.

tions between the aforesaid participants and other individuals. These separate conversations were necessitated by issues which arose during the course of the basic dialogue and which related to the subject matter of the basic conversation.

Beal testified that he had learned from Will Sheahon, superintendent for Brady, and from William Caruso, superintendent for Jones, that a work stoppage had transpired at Astoria. He placed the conference telephone call and during the course of the conversation was informed by VanOsdol that the work stoppage had transpired because of difficulties between Local 701 and Local 50 which were in the nature of "jurisdictional warfare." Representatives of Local 50 asserted that the ILWU had recently experienced "severe jurisdictional difficulties with several craft unions" and particularly with Local 701. Respondent's representatives added that efforts to resolve these jurisdictional matters had been rejected and that Local 50 had been warned by the craft unions that they intended to expand their jurisdiction. In the course of the conversation, VanOsdol and Niemi stated that incidents had been reported in the Astoria area involving animosity between the two locals and that the animosity was a sufficient ground for Local 50 to consider it dangerous to the health and safety of its members to work under Local 701 crane operators. As a consequence, Beal was informed by VanOsdol and Niemi that the longshoremen were not going to work under Local 701 crane operators.

As a result of the discussions which took place, the parties to the conference telephone conversation agreed to submit to arbitration the question of whether "(t)he working conditions that exist aboard these vessels [from which the

floating cranes operated], as related to the use of nonlongshore crane drivers, are not unsafe."[12]

d. *The area arbitrator's decision*

In due course, on April 27, 1969, the area arbitrator issued a written decision in the matter. In pertinent part, the arbitrator's decision reads as follows:

> THE UNION'S POSITION
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> It was the principal contention of the Union that they had recently experienced severe jurisdictional difficulties with several craft unions including Local 701—portable hoisting engineers. Repeated ILWU efforts to resolve these problems had been strongly rejected, and the craft unions had warned the ILWU that they intend to expand their jurisdiction on the waterfront.
>
> In view of this hostile atmosphere, the gangs assigned to these vessels stood by because the non-ILWU crane drivers represented an immediate danger to health and safety.

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12. The foregoing is based upon the credited testimony of Donald Beal. Received in evidence at the Section 10(k) hearing was a summary of the conference telephone conversation which transpird on April 3. This summary was prepared by Bill Church, a representative of PMA, from secretarial notes. There is no evidence to suggest that the summary, as prepared, was adopted or in any manner executed by representatives of Local 50. Beal testified that the summary constituted an accurate reflection of the conference conversations but his testimony on cross-examination reveals that the summary was, in fact, a refinement and interpolation of some aspects of the conversation. I rely upon the summary only to the extent that it is consistent with Beal's oral testimony, given at the Section 10(k) hearing. I specifically find, consistent with Beal's oral testimony and with a facet of the memorandum that during the conference conversations it was implied and discussed that Local 701 had made known to Local 50 its intention to expand its jurisdiction on the waterfront.

THE EMPLOYER'S POSITION

The Employers contended that since Local 701 crane operators had driven this equipment for years, have made no threatening remarks or gestures towards longshoremen, and their competency is not challenged, a real safety question does not exist under Paragraph 2.11 of Supplement III—Basic Agreement. Also, in the Employers' view, the basis of this dispute is jurisdiction—not safety—and work must continue under Section 1.52—PCLCD.

DISCUSSION

In the opinion of the Arbitrator, there could only be a condition involving health and safety in this series of operations if the nonlongshore crane operators were acting in a hostile or belligerent manner such as to create a dangerous working area for the longshore gangs. This not being the case, the operation is considered to be safe, and the Employers' Motion is sustained.

DECISION

The following oral decision issued to the parties is hereby confirmed:

1. This is a jurisdictional dispute.
2. There was no bona fide health and safety issue.
3. There shall be no payment for standby time.
4. The jurisdictional issue shall be referred to the Joint Coast Labor Relations Committee for resolution as required by the Pacific Coast Longshore Contract Document.

e. *The coast labor relations committee meets*

Thereafter, on May 8, 1969, the coast labor relations committee met at a conference attended by William Forrester, a representative of the Respondent, and by three employer representatives, B. H. Goodenough, John Fenton and J. J. O'Shea. The conference meeting was for the purpose of considering the decision of the area arbitrator which had been previously issued on April 27. The minutes of the meeting reveal that the Employers took the position that the Union was not entitled to raise a grievance as to a work assignment dispute through the use of the health and safety grievance procedure of the contract. The Employers took the further position that the merits of the work assignment dispute must be raised in accordance with the provisions of section 1.7 and 1.5 of the contract and not under the provisions relating to disputes on health and safety. The Employers further pointed out at the meeting that they had received demands concerning the work assignment from Local 701 and were apprised that the National Labor Relations Board had filed an injunction claiming that the Operating Engineers had an arguable position countering the position of Local 50 on the Astoria crane dispute. Consequently, the Employers requested at the meeting that there be an agreement that the use of "jurisdictional health and safety" is improper under the contract and that any grievances as to work assignments should be presented pursuant to section 1.52 of the contract. The minutes of the meeting reflect the position of Local 50 as articulated at the meeting as follows:

> The union's position is that even if the union was wrong in proceeding through the agreed procedure for disputes with respect to health and safety, that pro-

cedure, like the basic procedure, specifically provides that once the grievance machinery has been started the employers have a right only to continue work "in accordance with the specific provisions of the Agreement" if the matter "is covered by the Agreement", which is to use longshoremen on the Astoria water whirley [sic] cranes, and not to direct work to continue in any other way while the dispute continues.

The ILWU further asserts that it has been clearly established by the decisions of the Coast Committee interpreting the contract clauses, the contract clauses themselves, and the well established practice in the Columbia River Area, as shown by Portland and the facts stated in the affidavits submitted, that this work has been assigned to the longshoremen by the collective bargaining contract, that the longshoremen are entitled to this work in Astoria upon request, that a request was made for it, and that the longshoremen must be given this work and the employer was required to begin using longshoremen to do this work as soon as the grievance was mentioned. The requests from Local 701 must be denied.

f. *The coast arbitrator's decision*

The Joint Coast Labor Relations Committee, being unable at the meeting of May 8, to resolve the dispute before it, submitted the matter to the coast arbitrator on a joint motion of the parties. By decision dated May 8, 1969, Sam Kagel, coast arbitrator, pursuant to a proceeding to which the Operating Engineers were not a party and in which they did not participate, sustained the position of the ILWU to the effect that, "The PMA Employers were and are required to operate in accordance with the [ILWU-PMA] con-

tract, and specifically to use only longshoremen to operate floating whirly cranes in Astoria for loading logs . . ."

Conclusion

1. The procedural issues

The several procedural issues advanced by the Respondent and Intervenor for dismissing the instant complaint issued under Section 10(c) of the Act, or for otherwise quashing the notice of hearing herein, raise issues challenging in the most fundamental manner the legal propriety of the Board's procedures for resolving jurisdictional disputes under section 10(k) of the Act and for determining whether or not an unfair labor practice has been committed in violation of Section 8(b)(4)(D) of the Act. The foundation for these related proceedings is imbedded in the Rules and Regulations of the Board and in case precedent formulated by the Board in light of the decision of the Supreme Court in the *CBS* case.[13] Manifestly, for the Trial Examiner to rule favorably to the Respondent and Intervenor on the procedural issue which they have raised herein would require an exercise of discretion and amendatory authority which the Board has made clear is not his. I have carefully considered the motions and argument advanced by Respondent and Intervenor at the hearing, and I have similarly considered their respective briefs which renew the motions and amplify the supporting rationale therefor. In consideration

13. See, e.g., *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Co.)* 135 NLRB 1402, 1410-1411; *Local 991, International Longshoremen's Association, AFL-CIO, Etc. (Union Carbide Chemical Company)* 137 NLRB 750, 754-755; *Chicago Typographical Union No. 16, AFL-CIO (Central Typesetting and Electrotyping Co.)* 138 NLRB 231, 236-237. Section 102.89 *et seq.* of the Board's Rules and Regulations, Series 8, as amended.

thereof I find no warant in this proceeding for departing from established Board precedent and procedure.[14]

Encompassed within this conclusion which I reach is my rejection of the contention that the instant proceeding is rendered defective by the General Counsel's dismissal of the charge against the Operating Engineers, filed by PMA in Case No. 36-CD-55.[15] Similarly, I find without merit the assertion that factual distinctions attaching to two contentions raised by the Respondent and Intervenor render existing Board precedent inapplicable and leave the Trial Examiner free to dismiss the complaint. Initially, drawing upon the alleged viability of a Board certification in favor of the Respondent covering the disputed work, the Respondent and Intervenor contend that under the "unless"

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14. At the hearing the Respondent and Intervenor through offers of proof which were rejected by the Trial Examiner endeavored to establish, in support of their respective motions to dismiss and to quash the notice of hearing, (1) evidence of Board certifications and contractual commitments assertedly securing to the longshoremen the right to perform the disputed work; (2) arbitration awards supporting the claim of the longshoremen which were issued pursuant to the collective-bargaining agreements in effect between PMA and the Longshoremen; (3) the existence of an historical claim on the part of the longshoremen to the disputed work as well as a history of actual performance by the longshoremen of log-loading tasks through use of ships' gear, and otherwise, at the Port of Astoria, and at other West Coast ports; (4) a continuing and viable claim by the longshoremen to the disputed work; and (5) an awareness and recognition on the part of officials of PMA—assertedly possessive of the ultimate right to assign crane operators to tasks being performed by member stevedoring companies—of the contractual and certification-based right of the longshoremen to the disputed work. I affirm my rulings.

15. Section 3(d) of the Act; *United Brotherhood of Carpenters & Joiners of America, Local Union No. 978, AFL-CIO, et al. (Markwell & Hartz)* 120 NLRB 610, 612; *Division 1267, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Ordman*, 320 F.2d 729 (C.A.D.C.); *Balanyi v. Local 1031, International Brotherhood of Electrical Workers, AFL-CIO*, 374 F.2d 723 (C.A. 7).

clause of Section 8(b)(4)(D), a Board certification constitutes an absolute defense to the allegations of the instant complaint. Upon this premise, and analogizing the decision of the Board in *International Longshoremen's & Warehousemen's Union, et al., (United States Steel Corporation)* 153 NLRB 1363,[16] the Respondent and Intervenor contend that the Board has recognized that evidence of an effort on the part of the company to assign disputed work to a respondent union in whose favor a Board certification had issued is relevant and competent evidence in an unfair labor practice proceeding under Section 8(b)(4)(D), and that rejection of such evidence in an unfair labor practice hearing wherein a certification is raised as a defense is error. A companion consideration, not predicated upon the "unless" clause or upon the dictates of the *U. S. Steel* case, but logically and legally indistinguishable, contend Respondent and Intervenor, is the existence of viable collective-bargaining agreements between the signing employer and the contending, respondent union contractually entitled to perform the disputed work. On these bases, contend Respondent and Intervenor, the Trial Examiner should dismiss the complaint.

I find the *U. S. Steel* case to be inapposite and the contention of the Respondent and Intervenor with respect to the applicability of the certification and collective-bargaining agreements in the instant proceeding to be without merit. It is clear that in its Decision and Determination of Dispute in the Section 10(k) proceeding the Board con-

16. In *U. S. Steel*, in finding a violation of Section 8(b)(4)(D) flowing from a failure on the part of the respondent therein to conform to a Section 10(k) determination, the Board specifically observed that the respondent had raised no contention that in assigning the work to the employees represented by the respondent the company was failing to conform to any order or certification of the Board.

sidered and rejected the certification and contract contentions. Thus, the Board noted:

> PMA and its members Brady and Jones take the position that the work should be assigned to the Longshoremen both by virtue of its relation to the normal waterfront longshore work and because the work allegedly is covered by a Board certification and by the labor agreement between PMA and Longshoremen.
>
> * * *
>
> PMA and the Longshoremen claim that the work in dispute is covered by a certification, based on *Ship Owners' Association of the Pacific Coast, et. al.*, 7 NLRB 1002, a 1938 case in which the Board certified the alleged predecessor of the Longshoremen as the representative of "the workers who do longshore work in the Pacific Coast port of the United States for the companies which are members of" specified employer associations allegedly the precedessors of PMA. However, that certification was issued before the advent of the barge-mounted floating crane. In addition, the record shows that all post-certification contracts between those parties and their successors limited the broad language of the certification by excluding some work from the unit covered. Recent PMA-Longshoremen contracts provide that "All machinery, equipment, and other tools now or hereafter used in moving cargo shall be operated by longshoremen when used in an operation covered by this Agreement and the operation thereof is assigned to longshoremen and is covered by this Agreement," with certain exceptions. One of the exceptions specified is the operation of cranes mounted on floating crane barges.

In light of the foregoing evaluation, and after considering other evidence relevant to the assignment of the disputed

work, the Board found that employees represented by the Operating Engineers were entitled to the disputed work rejecting implicitly, if not explicitly, the contention of PMA and the Longshoremen with respect to the controlling nature of the certification and of the PMA-Longshoremen contract.

Also requiring delineation is the contention of the Respondent and the Intervenor that, in rendering its Decision and Determination of Dispute the Board failed, as required by *CBS* and the statute, to make a specific award of the disputed work. A careful reading of the Board's decision reveals that this contention is without merit. Thus, while refraining from, in terms, "awarding" the work to one of the contending parties, as is frequently Board practice,[17] the Board nonetheless found:

> In light of the above, we conclude that the relevant factors support the Employers' original assignment of this work to employees represented by the Engineers, and that the employees are entitled to the disputed work. We shall therefore determine the dispute in their favor.

As is clear from the Board's Decision and Determination of Dispute, the Board determined the dispute before it by finding specifically that the Operating Engineers were entitled to perform the work which it had described with specificity within the body of its decision. In finding that the Operating Engineers were "entitled" to the disputed work, and in then determining the dispute "in favor" of the Operating Engineers, the Board was, substantively and definitively, making an award or an assignment of the work. It augmented this determination by the further directive

17. See, e.g., *Sheet Metal Workers Local Union No. 332, AFL-CIO (Lear-Siegler, Inc.)* 176 NLRB No. 41, wherein the Board observed, "(w)e shall accordingly determine the dispute before us by awarding all installation of heating equipment . . ."

that the longshoremen were "not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employers to assign the above work to longshoremen represented by it." It is clear that the Board has construed the directive of the Supreme Court in the *CBS* case[18] as not requiring the "award" of disputed work assignments to be phrased in formula terms so long as it is specified definitively in the Decision and Determination of Dispute which of the groups claiming the right to perform the disputed tasks is entitled to the work.[19] Similarly, the proscription in the Board's Decision and Determination of Dispute in the instant case against Respondent's use of means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign the work in issue to its members is the proscription which the Board has customarily included in its post-*CBS* Decisions and Determinations of Dispute.[20]

The Merits

The evidence establishes that Respondent has not at any time since its issuance complied with the Board's Decision and Determination of Dispute. Accordingly, the only re-

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18. The Court in *CBS* stated, "it is the Board's responsibility and duty to decide which of two or more employee groups claiming the right to perform certain work tasks is right and then *specifically to award* such tasks in accordance with its decision." [Emphasis supplied.]

19. See, e.g., *International Union of Operating Engineers, Local Union No. 181 (E. C. Ernst, Inc.)* 174 NLRB No. 45, pp. 11-12; *International Brotherhood of Electrical Workers, Local 113, AFL-CIO (Westland Theatres, Inc.)* 180 NLRB No. 20, pp. 9-10; *Local 991, International Longshoremen's Association, AFL-CIO, Etc. (Union Carbide Chemical Company), supra*, p. 755.

20. See *N.L.R.B. v. International Longshoremen's and Warehousemen's Union, et al. (Aluminum Company of America)*, 71 LRRM 2500, enfg. 163 NLRB 1039, based upon conduct relating to the Board's Decision and Determination of Dispute reported at 158 NLRB 1024.

maining issue is whether Section 8(b)(4)(i)(ii)(D) was violated, as alleged in the complaint.

The evidence above recounted, including the abstention of the raftmen assigned to eight different cranes from performing their work tasks; the concession of the four raftmen to Krohn that they had been ordered to stand by until further orders; the statement of Roy Niemi to Stanley Radovich concerning the asserted reason for the actions of the raftmen and the statements of Respondent's representatives on the same subject made to representatives of PMA at the April 3 special meeting of the Astoria Joint Longshore Labor Relations Committee "meeting" all established—the latter conclusively so—the existence on April 3 of a Local 50 directed and supported policy of withholding in furtherance of Respondent's labor relations objective the services of longshoremen-raftmen. The evidence reveals a policy on the part of Respondent, extant on April 3, 1969, and persisting at times relevant herein, not to permit its members to perform any work in connection with the disputed log-loading assignment unless all the work required to successfully complete the assignment was performed by its members. Accordingly, I find that Respondent engaged in conduct rendering it responsible for the work stoppage that transpired, and that by and through its conduct which gave effectuation to its policy Respondent induced and encouraged raftmen employees, all of whom were its members, to engage in a strike. The evidence leaves little doubt that *an* object of the strike was to preempt the claim of the Operating Engineers to the work of operating the barge-mounted cranes and to force and require Brady and Jones to assign those work tasks to members of Respondent instead of employees represented by the Operating Engineers. Considerations of health and safety were manifestly

secondary and subordinate in nature to the jurisdictional considerations underlying the policy. Indeed, the decision by Respondent to claim the work may not be viewed as being unrelated tactically to efforts of craft unions, including the Operating Engineers, to expand their respective work jurisdictions along the waterfront. As the evidence establishes a strike by Respondent and successful inducement and encouragement of employees to engage in a strike and to refuse to perform employment services, all for the proscribed object of forcing Brady and Jones to assign the work of operating the floating cranes to members of Respondent to the exclusion of members of the Operating Engineers, I find that Section 8(b)(4)(i)(ii)(D) was, and has been, violated by Respondent.[21]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent, set forth in section III, above, occurring in connection with the operations of the Employers described in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease

21. *Chicago Typographical Union No. 16, AFL-CIO (Central Typesetting and Electrotyping Co.), supra; Local Union No. 272, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Prestress Erectors, Inc.)* 172 NLRB No. 19, enfd. 427 F.2d 211 (C.A. 5); *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)* 162 NLRB 703; see also *Local Union 825, International Brotherhood of Operating Engineers, AFL-CIO (Carleton Brothers Company)* 131 NLRB 452.

and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

Conclusions of Law

1. Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO, and International Longshoremen's and Warehousemen's Union, Local No. 50, are labor organizations within the meaning of Section 2(5) of the Act.

2. Willamette Western Corporation; General Construction Company; W. J. Jones & Son, Inc.; Brady-Hamilton Stevedore Company; and Pacific Maritime Association are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6) and (7) and of Section 8(b)(4) of the Act.

3. The Respondent has failed and refused to comply with the Decision and Determination of Dispute issued by the Board on February 26, 1970.

4. By inducing and encouraging the employees of Brady and of Jones to engage in a work stoppage or otherwise to refuse to perform services for their respective employers; and by threatening, coercing and restraining Brady, Jones, Willamette, General and PMA, with an object of forcing or requiring Brady and Jones to assign the work of operating barge-mounted floating, whirly-type cranes to employees who are members of, or represented by, the Respondent rather than to employees who are represented by the Operating Engineers, all in a circumstance wherein Brady and Jones were not failing to conform to an order or certification of the Board determining the bargaining representative for employees preforming such work, the Respondent has

engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(D) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[22]

ORDER

Respondent, International Longshoremen's and Warehousemen's Union, Local No. 50, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by Brady-Hamilton Stevedore Company, W. J. Jones & Son, Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal, in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threatening, coercing, or restraining Brady-Hamilton Stevedore Company; W. J. Jones & Son, Inc.; Willamette Western Corporation; General Construction Company; Pacific Maritime Association, or any other employer or person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require Brady-Hamilton Steve-

22. In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

dore Company and/or W. J. Jones & Son, Inc., to assign the work of operating barge-mounted whirly-type cranes at the Port of Astoria, Oregon, lifting bundles of logs from the water and placing them into the hold of a ship or a barge, to employees who are members of or represented by Respondent rather than to employees of Brady-Hamilton Stevedore Company and/or W. J. Jones & Son, Inc., who are represented by Hoisting and Portable Engineers, Local No. 701, International Union of Operating Engineers, AFL-CIO, unless Brady-Hamilton Stevedore Company and/or W. J. Jones & Sons, Inc., are failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in its business offices, meeting halls, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix."[23] Copies of said notice, on forms provided by the Regional Director for Region 19, shall, after being duly signed by an authorized representative of Respondent, be posted by the Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for Region 19 for posting by Brady-

23. In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading

"POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Hamilton Stevedore Company; W. J. Jones & Son, Inc.; Willamette Western Corporation; General Construction Company; and/or Pacific Maritime Association at all locations where notices to their respective employees are customarily posted, said Employers willing.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of the receipt of this Trial Examiner's Decision, what steps the Respondent has taken to comply herewith.[24]

Dated: APR 13 1971

/s/ JAMES T. BARKER
James T. Barker
Trial Examiner

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24. In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

Appendix

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT engage in, or induce or encourage any individual employed by Brady-Hamilton Stevedore Company and/or W. J. Jones & Son, Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce, or restrain Brady-Hamilton Stevedore Company; W. J. Jones & Son, Inc.; Willamette Western Corporation; General Construction Company; Pacific Maritime Association, or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Brady-Hamilton Stevedore Company and/or W. J. Jones & Son, Inc., to assign the work described below to employees who are members of or represented by Local No. 50, the Respondent herein, rather than to employees of Brady-Hamilton and/or W. J. Jones & Son, represented by Local No. 701 of the Operating Engineers, unless Brady Hamilton and/or W. J. Jones & Son is or are failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. The work involved consists of:

> Operating barge-mounted floating, whirly-type cranes lifting bundles of logs from the water and placing them

into the holds of ships and barges at the Employers' Astoria, Oregon operations.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION LOCAL NO. 50
(*Labor Organization*)

Dated ..... By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 310 Six Ten Broadway Building, 610 S W Broadway, Portland, Oregon, 97205. Telephone Number 226-3431.